## CCRB INVESTIGATIVE RECOMMENDATION

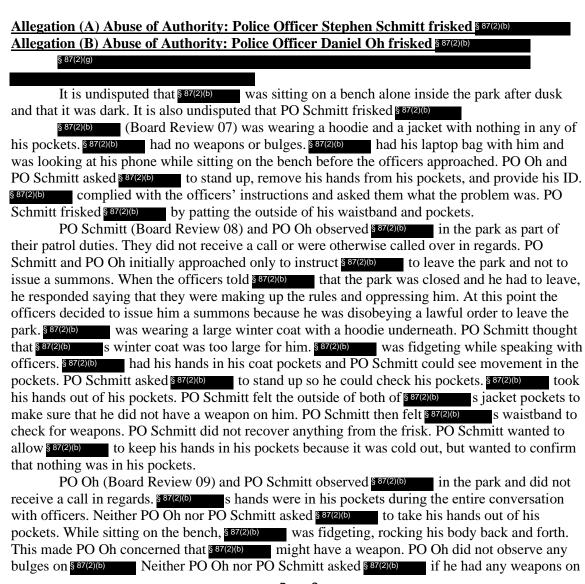
Investigator:		Team: CCRB Case #:		☐ Force ☐ Discourt. ☐ U.S.			
William MacLure		Squad #6	201810357	✓ Abuse	O.L.	☐ Injury	
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL	
Wednesday, 12/12/2018 6:28 PM		Lincoln Terrace Park		77	6/12/2020	1/27/2021	
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Time	Received at CCF	RB	
Thu, 12/13/2018 10:21 AM		CCRB	In-person	Thu, 12/13	Thu, 12/13/2018 11:16 AM		
Complainant/Victim Type		Home Address					
Subject Officer(s)	Shield	TaxID	Command				
1. POM Daniel Oh	02508	953195	071 PCT				
2. POM Stephen Schmitt	12418	956245	071 PCT				
Officer(s)	Allegatio	Allegation			Investigator Recommendation		
A.POM Stephen Schmitt	Abuse: Police Officer Stephen Schmitt frisked §87(2)(b)						
B.POM Daniel Oh	POM Daniel Oh Abuse: Police Officer Daniel Oh frisked						
§ 87(2)(g), § 87(4-b)							

## **Case Summary**

On December 13, 2018, \$37(2)(b) walked into the CCRB and filed this complaint. On December 12, 2018, at approximately 6:28 p.m., \$37(2)(b) was sitting on a bench inside Lincoln Terrace Park, in Brooklyn. PO Daniel Oh and PO Stephen Schmitt, of the 71st Precinct, approached \$37(2)(b) and told him that he could not be in the park after dusk. PO Schmitt frisked \$37(2)(b) after PO Oh told him to (Allegations A and B: Abuse of Authority, PO Oh wrote \$37(2)(b) a summons for \$37(2)(b) (Board Review 01).

Body worn camera footage of this incident was received from the NYPD (Board Reviews 02 through 06).

## **Findings and Recommendations**



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while he wrote the summons because was fidgeting with his hands in his pockets. PO Oh did not see where PO Schmitt frisked was fidgeting with his hands in his pockets. PO Oh did not see where PO Schmitt frisked Nothing was recovered from the frisk.  In PO Oh's BWC footage, society of shands are seen outside of his pockets at the beginning of the interaction. Society of does not appear to make any movements towards his waistband. At 1:24 in PO Oh's BWC footage, PO Oh tells PO Schmitt to "toss" society is sitting on the bench the entire time up until PO society asks him to stand up. At 2:05 in PO Schmitt's first BWC, he asked society to stand up and if he has "anything" on him. PO Schmitt frisks society informs PO Schmitt that he does not have anything on him. PO Schmitt frisks society out it is unclear where he touched during the frisk because the BWC is close to society out it is unclear where he touched during the frisk because the BWC is close to society in the waistband area.  The courts have held that a defendant's hand movement alone cannot justify a frisk. Behavior which is susceptible of innocent as well as guilty interpretation cannot constitute probable cause, People v. Miller, 121 A.D.2d 335, 1986, N.Y. (Board Review 10).	
§ 87(2)(g)	
Civilian and Officer CCRB Histories	
<ul> <li>This was the first CCRB complaint to which \$87(2)(b) has been a party (Board Review 13).</li> <li>PO Oh has been a member of service for six years and has been a subject in six CCRB complaints and 10 allegations, none of which were substantiated. \$87(2)(g)</li> </ul>	V
PO Schmitt has been a member of the service for five years and has been a subject in three CCRB complaints and eight allegations, none of which were substantiated.	

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## **Mediation, Civil and Criminal Histories**

• § 87(2)(b)	declined to mediate this	s complaint.	
[§ 87(2)(b)] [§§ 8	6(1)(3)&(4)] [§ 87(2)(c)]		
a			
Squad No.:			
Investigator:			
	Signature	Print Title & Name	Date
	C		
Squad Leader:		<del>_</del>	
	Signature	Print Title & Name	Date
Reviewer:			
	Signature	Print Title & Name	Date

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